THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO : 2313 of 2001

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

This writ petition is filed seeking a writ of certiorari by calling records relating to and connected file OA 4626 of 2000 on the file of the A.P. Administrative Tribunal, Hyderabad and to set aside the orders dated 10.08.2000 by holding the same arbitrary, erroneous and unsustainable and also to declare the writ petitioners as seniors to the unofficial respondent No.3 in the cadre of Senior Assistants and also to direct the official respondents 1 and 2 to consider the case of the writ petitioners to the posts of Superintendents in the existing vacancies.

2. The relevant facts in brief are as follows:

The 3rd respondent was recruited as Junior Assistant in the education department on 02.09.1980 at Kakinada.

The first petitioner was appointed as Junior Assistant on 17.08.1982, the second petitioner was appointed as Junior Assistant on 12.08.1983 and the third petitioner was appointed as Junior Assistant on 05.09.1984 in the same department. All of them were regularized as Junior Assistants taking their dates of appointments into consideration. Thus, the third respondent was senior to the petitioners 1 to 3 in the cadre of Senior Assistants. While so, on 12.09.1988 the Government issued G.O.Ms.No.361 sanctioning Senior Assistant posts for the department in which the petitioners 1 to 3 and 3rd respondent are working. In order to get promotion as Senior Assistant one must pass the prescribed departmental tests. The petitioners 1 to 3 had passed all the departmental tests even prior to the year 1988. The third respondent passed three departmental

tests prior to 1982 and appeared for remaining part-I Deputy Inspectors test in the year 1987. But, the results were published in A.P. Gazette declaring the results of the said test on 06.10.1988 and as per the said results the 3rd respondent passed that departmental test also. But, the said gazette was not printed and communicated to the department till December, 1988. As the posts were sanctioned on 12.09.1988, the department prepared combined seniority list on 11.10.1988 of Junior Assistants and Typists eligible for promotion as Senior Assistants. Though by then the 3rd respondent passed all the departmental tests, on account of non-printing of results in the official gazette and non-communication of the gazette to the department till December,1988, the entry could not be made in the service register of the 3rd respondent. As there was no entry regarding the passing of departmental test in the service register by 11.10.1988, the department did not include the name of the 3rd respondent in that seniority list of Junior Assistants prepared for the purpose of promotion to the cadre of Senior Assistants. The petitioners 1 to 3 were appointed as Senior Assistants on 18.10.1988 ignoring the 3rd respondent who is senior to them. The 3rd respondent made representation to the District Educational Officer to consider her for promotion to the post of Senior Assistant on par with her juniors since the promotions were effected given to the juniors. As there was no positive response, the third respondent approached the A.P. Administrative Tribunal in R.P.No.997 of 1998 on the file of the Tribunal and the Tribunal directed the District Educational Officer to reconsider her case basing on the results published in the Gazette on 06.10.1988. But, in spite of the orders passed by the Tribunal the District Educational Officer rejected the request of the third respondent. According to the third respondent, the Director of School Education also directed the District Educational Officer, Kakinada to consider third respondent's case for promotion of Senior Assistant. Thereafter, on 27.04.1990, the third respondent was promoted as Senior Assistant saying that her seniority will be decided after receipt of the orders of the Director. Even prior to that the third respondent had approached the Tribunal again by filing R.P.No.15167 of 1987 and the said R.P. was ultimately disposed on 03.11.1995 without going into the merits of the case as by then the third respondent was promoted as Senior Assistant. On 03.04.1996, the service of third respondent was regularized with effect from 01.01.1990 in the cadre of

Senior Assistant, whereas the petitioners 1 to 3 were regularized as Senior Assistants with effect from 04.11.1988. Thereafter, on 16.09.1998 the Deputy Secretary to Government issued a memo in respect of similar cases relating to two other persons viz. M.Balaiah and S.Phulamani to consider their cases as per the second proviso of Rule 6 of General Rules restoring their original places on par with the juniors in the higher category stating that the examination of the account test was conducted prior to 1st September of panel year. Basing on that memo, the third respondent made another representation on 02.01.2000 to reconsider her case fixing her seniority on par with her juniors. On 12.07.2000, the first respondent rejected the plea of the third respondent. Again the third respondent approached the Tribunal and filed O.A.No.4686 of 2000 and the Tribunal directed the authorities to implement the order of the first respondent dated 12.03.1990 restoring her seniority above the juniors in the cadre of Junior Assistants by giving notional date of promotion on par with the juniors in the cadre of Senior Assistants.

3. In the said O.A. the present writ petitioners are not made as respondents though they were made as parties earlier in the R.P.NO.15167 of 1989. Aggrieved by the said orders of the Tribunal in O.A.No.4686 of 2000 dated 10.08.2000 the writ petitioners with the leave of this Court filed the present writ petition contending that their services as Senior Assistant were regularized with effect from 04.11.1988, whereas the third respondent's services were regularized as Senior Assistant only from 01.01.1990 and therefore their seniority cannot be disturbed. The third respondent had already approached the Tribunal impleading the writ petitioners also as respondents therein and in that R.P.15167 of 1989 the Tribunal refused to grant any relief to the present third respondent and it has become final an that after a period of 4 years. It is further contended that the third respondent again approached the Tribunal for the same relief which was earlier rejected without impleading the present petitioners as respondents therein and without disclosing the previous rejection, misled the Tribunal and obtained the impugned orders at the admission stage itself. If the impugned orders of the Tribunal are implemented the writ petitioner should become junior in the cadre of Senior Assistants to the third respondent and therefore the impugned orders obtained from the Tribunal without impleading

the writ petitioners are not sustainable in law and are liable to be set aside.

4. As an alternative, it is further pleaded in the writ petition grounds that in any view of the matter, it is not the fault of the writ petitioners for non-inclusion of the name of the 3rd respondent in the Senior Assistants panel for the year 1987-88 and the writ petitioners are no way concerned regarding the exclusion of the name of third respondent in the panel for the years 1987-88 who are fit for promotion as Senior Assistants and that for no fault of the writ petitioners they cannot be penalized at this point of time and that the official respondents alone are to be blamed or found fault for exclusion of the third respondent's name in the Senior Assistants panel for the year 1987-88 and hence the official respondents have to create a supernumerary post for the unofficial respondent No.3 in case the unofficial respondent No.3 is to be considered for retrospective seniority in the cadre of Senior Assistants. It is further pleaded that the Tribunal erroneously placed reliance on the on the memo issued by the State Government in the year 1998 in respect of Smt.S.Pulamani and Sri M.Pullaiah in whose favour the promotion orders were reviewed in their respective cadre with retrospective effect and the similar benefit cannot be extended to the unofficial respondent here in as 3rd respondent's case is entirely different as he sought for restoration of promotion with retrospective effect in the cadre of Senior Assistant after long lapse of 10 years and as she was unsuccessful in getting the rejection orders dated 09.03.1989 set aside on earlier occasion. It is further pleaded that at any rate the Tribunal grossly erred in passing the impugned orders without impleading the writ petitioners who are the affected parties.

5. The unofficial 3rd respondent contested the writ petition contending that she filed R.P.15167 of 1989 before the Tribunal and simultaneously made representation/appeal to the first respondent requesting him to consider her case for promotion on par with her juniors and the said representation/appeal was considered by the first respondent viz. Commissioner and Director of School Education on 12.03.1990 and directed the second respondent viz. District Educational Officer, Kakinada to consider her case for promotion as

Senior Assistant with effect from October, 1988 giving her due seniority in the cadre of Senior Assistant and that in spite of the directions the 2nd respondent kept the matter pending and asked for several clarifications in the matter and in the meanwhile the second respondent promoted her as Senior Assistant by proceedings dated 27.04.1990 with a condition that her seniority will be decided as soon as the orders of the 1st respondent are received in respect of the matter and the orders of the Tribunal and that the matter was kept pending with the first respondent by way of one clarification or the other and finally her representation came to be rejected by order dated 12.07.2000 and therefore she questioned the said order dated 12.07.2000 and as she challenged only that order she did not implead the writ petitioners as parties as they are not necessary parties. It is further pleaded that as the 2nd respondent did not implement the orders of the first respondent dated 12.03.1990 and after a period of 10 years the subsequent Director of School Education and District Educational Officer failed to implement the orders of the then Commissioner and Director of School Education by rejecting her representation she filed O.A. only against the respondents 1 and 2 for a direction to implement the orders of then Commissioner of School Education and hence the writ petitioners are not necessary parties. It is further contended that the writ petitioners have no *locus standi* to question the orders of the Tribunal in O.A.No.4686 of 2000. It is further pleaded that she cannot be found fault for non-printing of the publication in the official gazette and communicated the same to the department and she cannot also be found fault with the delay in implementing the orders of the then Commissioner and Director of School Education. Therefore, the contention of the writ petitioners that O.A. is barred by limitation and *res judicata* holds no water, and hence, the Tribunal rightly considered her case and allowed the O.A. and passed orders on 10.08.2000 by giving valid and justifiable reasons. It is further contended that admittedly the writ petitioners are juniors to her, and that they cannot have any grievance over her claim for restoring her seniority and if at all they are aggrieved, they have a remedy after the official process is started for the purpose of seniority and the writ petition is premature. It is further pleaded that if at all the petitioners are so aggrieved, they should approach the Tribunal in the first instance and the petitioners cannot directly approach this Court and hence the writ petition is liable to be dismissed.

6. The official respondents 1 and 2 filed common counter-affidavit almost supporting the case of the writ petitioners both on the ground of laches and also alleged *res judicata*. But, the facts that the third respondent was appointed much earlier to the writ petitioners as Junior Assistant and that the third respondent passed all the tests except one long prior to 1987, that for remaining one test she appeared in November, 1987 and passed the said test but the results were not published by the A.P. Public Service Commission till 06.10.1988 and even after the publication of results the same was not printed in the official gazette and communicated to the department till December, 1988, are not disputed. It is also not disputed that in R.P.No.997 of 1989, dated 13.01.1989 the Tribunal directed the official respondents to consider her case for promotion as Senior Assistant. It is also admitted that the then Commissioner and Director of School Education, Hyderabad issued proceedings in Rc.No.2852/F1-3/89, dated 12.07.2000 directing the then District Educational Officer to consider the case of the 3rd respondent for promotion as Senior Assistant with effect from October, 1988 giving her due seniority in Senior Assistant cadre but the respondents 1 and 2 herein in their counter-affidavit stated that in the said proceedings the Commissioner only informed the District Educational Officer but has not given orders to that effect. In respect of the memo issued by the State Government relating to Smt. S. Pulamani and Sri M.Pullaiah, the official respondents pleaded that the case of 3rd respondent is not similar to their cases as the said cases relate to the year 1998 whereas the case of 3rd respondent relate to the year 1988. The official respondents relied on the orders of the Tribunal in R.P.No.15167 of 1989 wherein the Tribunal observed that as the respondents stated in their counter that the case of the present 3rd respondent will be considered in the next vacancy and she must have already been considered for promotion in the vacancies subsequently arose and therefore, no further orders are necessary in the case and the case is accordingly disposed of. Thus, the official respondents in their counter affidavit supported the case of the writ petitioners only on technical grounds.

7. During the course of hearing, the learned counsel for the writ petitioners reiterated the contentions raised in the writ petition. He submitted that as per the then existing rules' entry cannot be made regarding the passing of departmental tests till the publication of results are printed in the official gazette and communicated to the concerned department and that as admittedly, the gazette was not printed and communicated by 18.10.1988 on which date the promotions were effected and the official respondents did not promote the 3rd respondent and also rightly rejected the representation made by the 3rd respondent. It is further contended that at any rate, the third respondent kept quiet even when she was regularized with effect from 01.01.1990 as Senior Assistant and she did not challenge the orders of the Tribunal passed in R.P.No.15167 of 1989 and after a period of almost eight years, the third respondent again raised the issue of seniority, and therefore, she is guilty of laches and that the Tribunal, without considering the said aspects, allowed the O.A. at the admission stage itself though the effected parties are not made as parties to the O.A.

8. The learned counsel submitted that the proviso under Rule 6 of A.P. State and Subordinate Service Rules (for short 'The Rules') does not come to the aid of third respondent in the instant case to restore her seniority. Regarding the laches on the part of the third respondent, the learned counsel placed reliance on two Apex Court decisions:

1. ***RABINDRA NATH BOSE AND OTHERS v. UNION OF INDIA AND OTHERS*** wherein in it was held that the petition filed challenging the seniority after a period of 15 years cannot be entertained.

2. ***UNION OF INDIA AND ANOTHER v. S.S. BOTHIYAL AND OTHERS,*** wherein it was held that the delay and laches would defeat the remedy.

9. The counsel for the third respondent reiterated the contentions raised in the counter-affidavit filed on behalf of the third respondent. It is submitted that the second proviso contained in Rule 6 of the Rules, mandates the review of the panel prepared in cases, where the names of persons, who appeared for the examinations of departmental tests, were not included on account of non-publication of results as the publication of results dates back to the date of appearance for the examination, and hence, the Tribunal has rightly allowed the O.A. filed by the third respondent and there is no need for interference by this Court. Regarding non-impleadment of writ petitioners as respondents in the said O.A., he submitted that as the then Commissioner and Director of School Education has already issued an order directing the District Educational Officer to promote the respondent NO.3 as Senior Assistant with effect from October, 1988 along with her juniors and as the said order was not implemented by the District Educational Officer and the present Commissioner and Director of School Education, the third respondent impleaded only the present Commissioner and the District Educational Officer. The O.A. is filed for enforcement of the order of the then Commissioner and Director of School Education, and hence, there is no need to implead the present writ petitioners in such an O.A.

10. No arguments are advanced on behalf of the official respondents 1 and 2.

11. The points that arise for consideration in this writ petition are:

1. Whether the promotion of the third respondent as Senior Assistant is to be given effect from the dates on which promotions of her juniors in the Junior Assistant cadre were given effect as contended by the third respondent?

2. Whether the 3rd respondent id barred from making such a claim in view of the orders passed by the Tribunal in R.P.No.15167 of 1989 dated 03.11.1995?

3. Whether the Tribunal erred in allowing O.A.No.4686 of 2000 by its

order dated 20.08.2000?

4. Whether the impugned orders of the Tribunal are liable to be set aside on the ground that the present writ petitioners were not made as parties to the said O.A. and on the ground of laches on the part of the R-3?

5. To what result?

12. **POINT NO.1:**

It is not in dispute that the third respondent was appointed on 02.09.1980 as Junior Assistant and she passed three departmental tests i.e. Account Test, Part-II Test of Deputy Inspector, and Part-III Test of Deputy Inspector by 22.11.1982 and she appeared for Part-I Test of Deputy Inspector Test on 28.11.1987. In the normal course, results ought to have been published before July, 1988. It is also not in dispute that the present writ petitioners 1 to 3 were appointed as Junior Assistants on 17.08.1982, 12.08.1983 and 05.08.1984 respectively, and therefore, they were juniors in the cadre of Junior Assistants to the third respondent. It is also not in dispute that the Senior Assistant posts were sanctioned in September, 1988 and the combined panel of the names of Junior Assistants and the typists eligible to get promotions were prepared on 18.10.1988 and by then the results of departmental tests held on 28.11.1987 were published on 06.10.1988 in which the third respondent passed the departmental test which is a mandatory requirement for promotion to the cadre of the Senior Assistant. It is also not dispute that the third respondent filed a representation before the District Educational Officer along with the letter issued by the A.P. Public Service Commission to the effect that she passed the departmental test, but the District Educational Officer rejected her request on the ground that there is no entry in the service register to that effect as the results were not printed in official gazette and communicated to the department. Thus, the name of the third respondent could not be included in the panel prepared on 18.10.1988 though the third respondent passed the test as per the results published on 06.10.1988. The District Educational Officer may be right to state that unless there is an entry in the service register, the name of the third respondent cannot be included in the seniority list prepared on 18.10.1988.

But, when the third respondent was given promotion as Senior Assistant after the official gazette was communicated, the District Educational Officer ought to have reviewed the panel prepared on 18.10.1988 giving her the original place as contained in the seniority list of the Junior Assistants. As seen from the Rule 6, panel have to be prepared for promotion in the month of September every year taking first September of the year as the qualifying date to determine the eligibility of the candidate for such appointment. As per second proviso contained therein, the panel of candidates so prepared, shall be reviewed after a period of six months reckoned from the date of approval of the panel, for the purpose of considering the cases of such other persons, whose names were not included in the panel prepared earlier for not passing the prescribed tests or for not having special qualifications prescribed under the rules, if they have subsequently passed those tests or acquired the said qualifications and are otherwise found suitable for inclusion in the panel of the year. In the instant case, the third respondent appeared for the departmental test in November 1987 itself, and the results ought to have published before the end of July 1988 and for no fault of third respondent, the results were not published by the A.P. Public Service Commission and the results were published subsequently, on 06.10.1988 and even after that those results could not be printed in official gazette till December, 1988. For such lach on the part of the A.P. Public Service Commission, the third respondent cannot be penalized. In fact, in the grounds of writ petition, the petitioners themselves in para 4 at page 10 stated that the official respondents alone to be blamed or found fault for exclusion of the unofficial respondents names in the Senior Assistants panel for the year 1987-88. The writ petitioners also did not find fault on the part of the third respondent for non-inclusion of her name in the panel prepared for the year 1987-88. The Government of Andhra Pradesh in Memo No. 2745/T.E.2/98-4, dated 16.09.1998, drew the attention of the Commissioner of Technical Education that in case the candidates appeared for the examination for the departmental tests prior to 1st September of panel year, their names should be considered for that panel year though the results were announced lately, as per the second proviso contained in rule 6 of A.P. State and Subordinate Rules that their original place on par with their juniors shall be restored in the higher category also. It is also the common practice to restore to the original places in the higher category in case the promotion of the candidate could not be

considered earlier for no fault of that particular candidate. For example, if a departmental enquiry is pending against an employee, his name will not be considered for promotion for that reason and in case the employee is absolved of all the charges after due enquiry, he shall not only be promoted but also be given his original place on the principle that for no fault of his own, he cannot be deprived of his promotion with original seniority. The same principle applies here also because in November, 1987 itself the third respondent appeared for departmental test and the results ought to have been published before July, 1987 as per the rules of the A.P. Public Service Commission. However, when the third respondent passed the test appeared in November 1987, the result of the examination shall date back to the date of writing the examination. In fact, in the instant case, by the time the juniors of third respondent were considered the results were also published on 06.10.1988 but her name could not be included on some technical ground of non-communication of printed gazette copy. As already observed supra, third respondent was in no way responsible for such late publication of the results. However, the fact remains that she passed the examination conducted in November, 1987. Therefore, the respondent deemed to have been qualified for promotion as Senior Assistant along with her juniors who were promoted and regularized with effect from 04.11.1989. In fact, when the District Educational Officer did not consider her request for promotion as Senior Assistant, immediately the third respondent approached the Tribunal by filing R.P.No.997 of 1989 seeking a direction to the District Educational Officer to reconsider her case for promotion to the post of Senior Assistant on the date on which her juniors are promoted i.e. 18.10.1988 with consequential benefits. The Tribunal passed the following order in R.P.No.997 of 1989:

> *"In view of the specific stand of the petitioner that she has passed all the departmental tests and that the results were also published on 06.10.1988 and that she is eligible for promotion as Senior Assistant and senior to the persons who were promoted to the vacancies which were created in G.O.Ms.No.361, dated 12.09.1988, I hold that it is a fit case where a direction has to be issued to the second respondent to reconsider the case of the petitioner and to take a decision within 30 days of the receipt of this order, failing which the petitioner is at liberty to approach this Tribunal for reddressal. The R.P. is disposed of at the*

admission stage with the above observations."

As the representation was being disposed of at the admission stage, the Tribunal could not directly order the second respondent to give promotion as prayed for. But, when the facts mentioned therein regarding the appearance of the departmental tests and the publication of results are found to be true, the second respondent has no option except to give her promotion as prayed for in her representation. A reading of the said order of the Tribunal goes to show that if the stand of the petitioner that she passed the departmental tests and results were published on 06.10.1988 is true, she is eligible for promotion as Senior Assistant and senior to the persons who were promoted to the vacancies which were granted in G.O.Ms.No.361, dated 12.09.1988. The version of the third respondent that she appeared for departmental tests and she passed the departmental tests on 06.10.1988 is not found to be incorrect. It is not the case of the official respondents that the third respondent did not pass the departmental tests by 06.10.198. Therefore, the second respondent therein had no option except to give promotion as prayed for in the said representation in order to comply with the direction of the Tribunal. But, unfortunately, the then District Educational Officer did not obey the orders of the Tribunal and rejected the representation made by the third respondent which forced her to approach the Tribunal again by another R.P.No.15167 of 1989. At the same time, the third respondent submitted a representation to the Commissioner and Director of School Education, A.P. Hyderabad, who promptly issued proceedings in Rc.No.2852/F1-3/1989, dated 12.03.1990 directing the District Educational Officer to consider the case of the third respondent for promotion as Senior Assistant with effect from October, 1988, giving her due seniority in the Senior Assistant cadre. In spite of those proceedings, the then District Educational Officer simply gave her promotion as Senior Assistant without giving her due seniority in the Senior Assistant cadre with effect from October 1988. It appears that as by then the third respondent had approached the Tribunal by way of R.P.No.15167 of 1989 and the same was pending before the Tribunal, the District Educational Officer did not choose to give effect to the orders of his superior i.e. the Commissioner and Director of School Education and preferred to wait for the decision of the Tribunal. This is most unfortunate and it is unbecoming conduct of the then District Educational Officer. As the department

was not responding to her request, the third respondent had approached the tribunal and when the departmental head viz. the Commissioner and Director of School Education himself gave the final order for third respondent, there is absolutely no need for District Educational Officer to wait for the result of the R.P. Had the orders of the Commissioner and Director of School Education been implemented by the District Educational Officer, the third respondent would have withdrawn her representation made before the Tribunal. However, pendency of R.P. before the Tribunal does not in any way come in the way of District Educational Officer to implement the orders of the Director and Commissioner of School Education. Now the official respondents wanted to defend the action of the then District Educational Officer in not acting upon the proceedings of the Commissioner and Director of School Education in R.C.No.2852/F1-3/1989, dated 12.03.1990 by saying that the Commissioner only informed the District Educational Officer but not given orders to that effect. This is a very curious defence taken by the present official respondents. When written proceedings have been issued by the Commissioner and Director of School Education to District Educational Officer informing him that the case of third respondent shall be considered for promotion as Senior Assistant with effect from October, 1988 giving her due seniority in the Senior Assistant cadre, the District Educational Officer is bound to take it as an order and implement the same. Therefore, the stand taken by the official respondents in their counter affidavit in this regard is not at all tenable.

To the misfortune of the third respondent even the Tribunal did not realize the implications of the disposal of R.P.No.15167 of 1989 on 03.11.1995 without going into the merits. The orders of the Tribunal reads as follows:

> *"In pursuance of notice, the respondents filed counter saying that by October, 1988 she was not qualified and she will be considered for promotion in the next vacancy, the counter was filed long back. The petitioner must have been considered for promotion in the vacancies subsequently arose. Therefore, no further orders are necessary in the case. The case is accordingly disposed of. No costs."*

As seen from the said orders, it is clear that the said orders were passed without hearing the parties and without going into the merits. The Tribunal

appears to have been under the impression that the said representation was filed only seeking promotion. The Tribunal did not go into the contention of the applicant therein that she passed departmental test by 06.10.1988 and she is entitled to be promoted as Senior Assistant on par with her juniors. Therefore, such order cannot debar the third respondent to re-agitate the same or to seek enforcement of the orders of the Commissioner and Director of School Education dated 12.03.1990. It is unfortunate that the official respondents wants to take advantage of such an order to deprive the due seniority to third respondent ignoring the orders of the Commissioner and Director of School Education and also ignoring the proviso to Rule 6 of A.P. State and Subordinate Service Rules. For no fault of third respondent, she was driven pillar to post seeking justice. The official respondents cannot stand on technicalities when patent injustice has been done to one of its employees. The official respondents cannot justify the action of the then District Educational Officer, Kakinada, who failed to implement the directions of his superior and also failed to follow the provisions contained in A.P. State and Subordinate Service Rules. We have no hesitation to hold that the third respondent is entitled for promotion as Senior Assistant with effect from the dates on which her juniors were promoted as Senior Assistants and that the Tribunal in the year 2000 in O.A.No.4686 of 2000 rightly granted the relief and remedied the injustice caused to unfortunate woman employee in fixing her seniority in the Senior Assistant Cadre.

13. **POINT No.2:-**

We have already stated observed supra that the Tribunal disposed of R.P.No.15167 of 1989, without touching the merits of the case. The Tribunal in the said R.P. did not decide the point in dispute whether the promotion of R.3 is to be given effect from October 1988. The said order does not even indicate that any of the parties to the said R.P. were heard at all before passing the said orders disposing off the R.P. stating that no further orders need be passed in the matter, and so, the said order cannot be said to be a bar for R-3 to make further representation to the authorities to implement the orders dated 12.03.1990 of the then Commissioner and Director of School Education and to approach the Tribunal in O.A.No.4686 of 2000 challenging the rejection of her representation made in the year 2000. Further, as the Commissioner & Director

of School Education issued proceedings in her favour on 12.03.1990 long before the disposal of the R.P. by the Tribunal in the year 1995, R-3 has got every right to seek implementation of the orders of Commissioner & Director of School Education ignoring the orders of the Tribunal R.P.No.15167 of 1989. Hence, we find no force in the contention of the writ petitioner and the official respondents in this regard. Thus, this point is also found in favour of the third respondent and against the writ petitioners.

14. **POINT NO.3**:-

It is true that the Tribunal in O.A.No.4686 of 2000 passed orders at the admission stage itself even before the official respondents herein filed counter affidavit. But, as seen from the orders, the learned Division Bench of the Tribunal heard not only the counsel for the applicant therein viz., R-3 herein but also the Government Pleader before passing the orders. The learned Tribunal gave cogent reasons for allowing the O.A. The facts relied on by the Tribunal are not in dispute. The Tribunal relied on its earlier decisions in a similar case rendered in O.A.No.2696 of 1998, wherein it was held that for preparing the panel the date of appearance in the last day examination shall be taken into consideration for the purpose of reckoning the date of acquisition of the eligibility even if the candidate is declared to have passed the examination at a later date. The learned Tribunal observed that the panel year is from 1st September to 31st August of every succeeding year and a candidate, who appeared for departmental examinations prior to the 1st October of the year and is declared to have passed subsequently after the commencement of the date of the panel year, at any time during the panel year, must be deemed to have been fully eligible with reference to the qualifying date of panel year viz., 1st September of the year. Basing on such interpretation of Rules contained in Rule 6 of A.P. General and Subordinate Service Rules, the learned Tribunal held that

the proceedings of the Commissioner and Director of School Education in Rc.No.2852/F1-3/89, dated 12.07.2000 rejecting the request of R-3 for fixing her seniority in the cadre of Senior Assistants above her juniors, who were promoted earlier to her in the year 1988, are violative of Government Rules on the subject. The learned Tribunal, in support of their interpretation of Rules, also relied on a Government Memo No.2745/T.E.2/98-4, dated 16.09.1998 based on which the Tribunal in O.A.2696 of 1998 held that the date of appearing for the examination is the criteria for reckoning the date of a candidate passing the departmental tests. We are in entire agreement with the Tribunal in respect of the interpretation of Rule 6 of the A.P. General Subordinate Service Rules. In our considered view, the learned Tribunal rightly held that the proceedings in Rc.No.2852/F1-3/89, dated 12.07.2000 impugned in O.A.4686 of 2000, cannot be sustained. We do not find any irregularity or illegality in the orders passed in O.A.No.4686 of 2000. Thus, this point is also found in favour of the 3rd respondent and against the writ petitioners.

15. **POINT NO.4:-**

The learned counsel for the writ petitioners contended that R-3 slept over the matter for a period of ten years without challenging her seniority *vis-a-vis* with the writ petitioners, and therefore, the claim of R-3 ought to have been rejected on the grounds of laches. In support of his contention, he relied on a decision reported in **Rabindra Nath Bose and others v. Union of India and others** (1st supra), wherein it was held that the writ petition filed fifteen years after the 1952 attacking the changes in the seniority list of Income Tax Officers as violative of Articles 14 and 16 of the Constitution of India is not maintainable and that no relief can be given to the petitioners, who without any reasonable explanation, approach Supreme Court under Article 32 of the Constitution after inordinate delay. The facts of the cited case are entirely different to the facts of the instant case, because in the cited case, the petitioners, who are the Assistant Commissioner of Income Tax challenged the appointment of respondents therein, to the post of Income Tax Officers Class-I Grade-II Services and seniority list of those officers as existing on 1.1.1950 and the Seniority Rules of 1949 and 1950 insofar as they had effect up to January 26, 1950. The Supreme

Court held that the fact that the seniority list of the Officers was finally settled after the Constitution came into force, would not enable the petitioners to appeal to Articles 14 and 16, the rules applicable for preparing the seniority List being the seniority Rules of 1949 and 1950. The Supreme Court held that Article 13 of the Constitution has no retrospective effect and therefore, any action taken before the commencement of the Constitution in pursuance of the provisions of any law which was a valid law at the time when such action was taken cannot be challenged and the law under which such action was taken cannot be questioned as unconstitutional and void on the score of its infringing the fundamental rights enshrined in Part III of the Constitution. Thus, the facts of the cited case are not at all similar to the facts of the instant case and the decision therein cannot be applied to the facts of this case. Further, in the instant case, the 3rd respondent has been agitating before the authorities even since prior to 18.10.1988 on which date the panel of names was prepared ignoring her name stating that the results of the departmental tests have already been published on 6.10.1988, when her name was not considered, she approached the Tribunal and obtained favourable orders and in spite of such favourable orders, the second respondent did not follow the directions given by the Tribunal. Further, thereafter, she submitted a representation to the first respondent-Commissioner & Director of School Education, who also passed favourable orders, giving direction to the District Educational Officer to promote 3rd respondent with effect from October, 1988 and that order was also not followed by the learned District Educational Officer. Under these circumstances, it cannot be said that there were laches on the part of the third respondent, we find that the decision relied on by the writ petitioners does not come to their aid in the instant case.

16. The writ petitioner relied on another decision of the Supreme Court reported in **Union of India and another v. S.S. Bothiyal and others (**2nd supra), wherein the Supreme Court discussed as to when the delay and laches, defeat the remedy. In the cited case, the respondent therein was denied promotion as Deputy Commandant in 1970 and again in 1971 but promoted in 1972, and thereafter, promoted as Commandant in 1975 and his three representations against his non-promotion as Deputy Commandant rejected respectively in

June 1971, November 1974 and July 1977. In the year 1978, he filed writ petition before the High Court and the High Court allowed the writ petition. Against the same, the Union of India preferred an appeal before the Supreme Court. The Supreme Court held that after rejection of respondent's first representation in June 1971, there was no occasion for him to wait further for challenging his non-promotion and the repeated representations do not extend cause of action. In the cited case, the respondent was not fit for promotion in the year 1970 and also in the year 1971 and he was found fit in the year 1972. But, in the instant case, the third respondent passed the departmental tests even before the selection panel was prepared and she obtained favourable orders from the Tribunal at the first instance and also by the Commissioner & Director of School Education and the appellant sought for implementation of the orders of the Commissioner & Director of School Education and she did not keep quiet and she has been approaching the Tribunal and also authorities time and again. Therefore, the case of R-3 in the instant case, cannot be compared with the respondent in the cited case. Thus, the facts in the cited case are not similar to the facts of the instant case, and hence, the decision therein cannot be made applicable to the facts of the instant case. Therefore, we find no force in the contention of the writ petitioner that R-3 is not entitled for any relief on account of the laches on her part.

17. The learned counsel for the petitioners contended that 3rd respondent obtained favourable orders in O.A.No.4686 of 2000 without impleading the writ petitioners, who are affected parties, and thereby, denied opportunity to the writ petitioners to contest the claim of R-3 before the Tribunal, and hence, the orders of the Tribunal are liable to be set aside on that ground.

17. It is true that the present writ petitioners are not made parties to the O.A.No.4686 of 2000, but no relief was prayed against the writ petitioners herein. R-3 complained non-implementation of the orders of the Commissioner & Director of School Education dated 12.03.1990 in which the Commissioner directed the District Educational Officer to promote R-3 with effect from October, 1988. However, the writ petitioners have been given opportunity in the present writ petition to put forth their objections of the claim of R-3 and we have

considered their objections at length in the present writ petition. Therefore, in our considered view, the writ petitioners are not prejudiced in any manner whatsoever. In fact, the writ petitioners admitted that for no fault of R-3, she was denied promotion along with them in October 1988. Under these circumstances, we consider it not necessary to remand the matter to the Tribunal to implead the writ petitioners. Third respondent, who is denied promotion with retrospective effect from October, 1988 for no fault of her, cannot be denied relief on technical grounds. Thus, this point is also found in favour of R-3 and against the writ petitioners.

18. **POINT NO.5:-**

In view of the findings in point Nos. 1 to 4, we find the writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed and the orders passed by the Tribunal in O.A.No.4686 of 2000, dated 20.08.2000 are hereby confirmed. No costs.

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T.MEENA KUMARI, J

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P.LAKSHMANA REDDY, J

Dated: 6.10.2005

Note: L.R. Copy to be marked.

B.O.

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